

General Information Letter: Nonresident who received no compensation "paid in this State" or other Illinois-sourced income is entitled to a refund of Illinois taxes withheld in error by his employer.

October 18, 2002

Dear:

This is in response to your letter dated September 3, 2002, in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL. In your letter you state as follows:

Since I have not received any refund, I contacted the Illinois Department of Revenue and spoke to Marlene on the 800 line. She advised me to contact your offices for assistance. At this time I would like to request a Private Letter Ruling and possible refund in the matter of nonresident payment of Illinois State Income Taxes.

The following will explain my situation relative to the work in which I was involved.

During the tax year of 2001 my permanent addresses were:

In Connecticut from January 1, 2002 to October 31, 2001:

ADDRESS1

CITY1, CT ZIP CODE1

In Nevada from October 31, 2001 to December 31, 2001:

ADDRESS2

CITY2, NV ZIP CODE2

From time to time I perform work as a Proctor for a company called COMPANY1 which is located in the state of Illinois. My duties are to supervise the testing of Boilermaker Welders. Since my paychecks were processed in Illinois, state income taxes were withheld by my employer COMPANY1. The address for that company is:

COMPANY1

ADDRESS3

CITY3, IL ZIP CODE3

Although this testing is performed on a national basis, no weld testing or work was performed in the state of Illinois. As required, I completed and submitted to the Illinois Department of Revenue the 2001 Form IL-1040 and the Schedule NR Form, prior to the April 15th deadline, I believe that, in accordance with Schedule NR IL-1040 Instructions, the (Note) under the under the General Information 2nd question would apply in this case. Also attached to the From IL-1040 and Schedule NR was a copy of a letter from COMPANY2 (CPAs) to COMPANY1 explaining the situation of those Proctors residing outside the state of Illinois.

As a resident of Connecticut I believe that the Illinois State Income Taxes withheld, were withheld in error and should be refunded to me.

Attached for your information and possible actions are copies of the 2001 Form IL-1040, Schedule NR and Letter from COMPANY2 which were previously forwarded to the Illinois Department of Revenue for a refund.

Would you please research this matter and advise me as to when I may receive the refund of those taxes withheld in error. Your assistance and actions are greatly appreciated.

Your 2001 IL-1040 shows Line 1 Federal Adjusted Gross Income of \$87,948.74. You claimed a subtraction modification in the amount of \$18,929.50 for qualified retirement benefits which are not at issue, leaving a remainder of \$67,019.24. We conclude from your letter that this latter amount represents only compensation received from COMPANY1. You entered \$4,500 as Illinois base income on Line 14. Against this amount, you claimed \$4,000 of personal exemptions, which should have resulted in net income of \$500 and tax, at 3%, of \$150. You however entered a figure of \$0 for both net income and tax.

When I discussed your correspondence and account with Ms. Terri Knox of the Department's Problems Resolution Division, this is what she advised me regarding your 2001 return:

(H)e is a balance due of \$1.45. TP is a nonresident computing a Sch. NR shows an Illinois Base Income of \$4,500.00 less the exemption allowance of \$260.00 resulting in net income of \$4,240.00 and tax due of \$127.20. He had withholding for Illinois of \$125.76; bal due account.

He filed as a nonresident and attached a Schedule NR. It is my opinion he doesn't understand the Schedule NR – there is no math error, IL-1040 was processed as filed.

For your information, non-residents are required to pro-rate their personal exemptions. That is why Ms. Knox only credited you with the \$260 figure. As processed then, the Department determined that there was no overpayment; hence no refund was issued.

Upon review however, and notwithstanding the entries on your return, the facts presented in your correspondence support a different result. We took the liberty of contacting COMPANY1. They

verified in writing that for the taxable year 2001, you performed no services for them in Illinois. When combined with the evidence submitted regarding your being a non-resident of Illinois during 2001, we can find no legal basis for attributing any of your compensation income for that year to this State. As a consequence, the entire amount of \$125.76 was incorrectly withheld by your employer and is refundable to you. We are forwarding a copy of this correspondence to Ms. Knox with instructions to adjust your account accordingly. If you have further questions regarding your account, you may contact Ms. Knox in Problems Resolution at (217) 782-2627.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax